

REMARKS

Claims 9, 18, 23, 26-28, 30, 32 and 34 are pending in the application. Claims 10, 19, 22, 24-25, 31 and 35 have been cancelled without prejudice and without disclaimer of subject matter. Claims 9, 18, 23, 26-28, 30, 32 and 34 have been amended. No new matter has been added.

Claims 9, 18, and 30 are independent.

On page 2 of the Office Action, Claim 23 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as his invention. Independent Claim 18 and dependent Claim 23 have been amended to clearly distinguish the “first support pads” and the “second support pads.” Accordingly, the rejection under 35 U.S.C. §112 is believed to have been overcome.

On page 2 of the Office Action, Claims 18, 19, 22-28, 30, 34, and 35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Honer, U.S. Patent No. 4,279,263, in view of any of Corley, U.S. Patent No. 2,367,459, Ihnat, Jr., U.S. Patent No. 3,588,914, and McGarrity, U.S. Patent No. 6,438,761. Claims 19, 22, 24, 25 and 35 have been cancelled, thereby rendering the rejection of these claims moot. Claim 18, as amended, states “at least one second support pad having an opening therethrough...positionable about the back of the head of the infant to locate the opening about a flattened area on the head.” Claim 30 similarly states, “at least one second support pad having an opening therethrough...positionable between the back of the head of the infant and a surface.”

Honer ‘263 discloses a head supported pillow that is “selectively attachable to a person’s head for providing comfortable support for the person’s head,” (Column 1, Lines 18-20). The Examiner states that “to have formed the Honer headgear so as to allow for removably attaching

the support cushion pad...would have been obvious...with Inhat, Jr particularly teaching application of a toroidal support pad," (Office Action, Page 3). Neither the Corley '459 nor the McGarrity '761 references disclose or suggest such structure for treating deformational plagiocephaly and therefore cannot render obvious Applicant's Claims 18 or 30 either alone or in combination with the Honer '263 reference. Accordingly, Applicant will address the combination of the Honer '263 and Inhat '914 references.

Primarily, there is no motivation to combine Honer '263 with Inhat '914. While Honer '263 discloses a pillow "for providing comfortable support for the person's head," Inhat '914 discloses a "headgear which is primarily designed to protect the outer ears of the wearer against physical injury during hand-to-hand sports contact," (Column 1, Lines 28-31). Honer '263 fails to teach or suggest protecting the outer ears from physical injury, while Inhat '914 fails to disclose or suggest providing a "comfortable support" pillow, which further evidences the lack of motivation to combine these references. Moreover, an apparatus "employed for the protection of the outer ears whenever they are subjected to rough, injury-producing physical contact," (Inhat, Column 1, Lines 34-36) is completely contradictory and inapposite to a device providing "adequate support for a person's head...whether the person is in a conventional bed, or is attempting to rest in a chair," (Honer, Column 1, Lines 34-37).

Even if the references were proper to combine, neither Honer '263 nor Inhat '914 teaches or suggests the feature recited in Applicant's amended Claims 18 and 30, i.e., "at least one second support pad having an opening therethrough...positionable about the back of the head." Honer '263 provides a back cushion "designed to conform to the back of a person, beginning with the back of a head...extending to the neck area...and perhaps extending slightly into the

thoracic region,” (Column 2, Lines 5-10), which is illustrated in Figures 1 and 2 of Honer. However, Honer ‘263 fails to disclose or teach the use of a support pad having an opening therethrough to treat deformational plagiocephaly, as required by Applicant’s Claims 18 and 30. Inhat ‘914 discloses ear protectors having a “resilient cushion” which “comprises a toroidal ring,” (Column 4, Lines 19-21). As the ear protectors of Inhat ‘914 circumscribe a portion of the ear, it would be contradictory to the teaching of Inhat ‘914 to have a “support pad having an opening therethrough ...positionable about the back of the head,” as such a pad would fail to protect the ears. Moreover, if the toroidal cushion of Inhat ‘914 was combined with the back cushion of Honer ‘263, then the back cushion would fail to “conform to the back of a person, beginning with the back of a head...extending to the neck area,” as required by Honer ‘263.

As there is no motivation to combine Honer ‘263 with Inhat ‘914, and further as Honer ‘263, either alone or in combination with Inhat ‘914, fails to teach or suggest the requirements of Applicant’s amended Claims 18 and 30, the rejection under 35 U.S.C. §103(a) is believed to have been overcome, thus placing Claims 18 and 30 in condition for allowance. Moreover, Claims 23, 26-28, and 34 are believed to be allowable as they depend from independent Claims 18 and 30, respectively.

On page 4 of the Office Action, Claims 9 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Honer, U.S. Patent No. 4,279,263, in view of any of Corley, U.S. Patent No. 2,367,459, Ihnat, Jr., U.S. Patent No. 3,588,914, and McGarrity, U.S. Patent No. 6,438,761, as applied to Claims 18, 19, 22-28, 30, 34, and 35 above, and further in view of Bridley, U.S. Patent No. 5,581,832. Claim 10 has been cancelled, thereby rendering the rejection of this claim moot. Claim 9, as amended, recites, “at least one second support pad having an opening

therethrough...positionable about the back of the infant's head to locate the opening about a flattened area on the head." Neither the Bridely '832, Corley '459 nor the McGarrity '761 references disclose or suggest such structure for treating deformational plagiocephaly and therefore cannot render obvious Applicant's Claim 9 either alone or in combination with the Honer '263 reference. For the reasons stated above, there is no motivation to combine Honer '263 with Inhat '914. Moreover, Honer '263, either alone or in combination with Inhat '914, fails to teach or suggest the requirements of Applicant's amended Claim 9. As such, the rejection under 35 U.S.C. §103(a) is believed to have been overcome, thus placing Claim 9 in condition for allowance.

On page 5 of the Office Action, Claims 31 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over Hone, U.S. Patent No. 4,279,263, in view of any of Corley, U.S. Patent No. 2,367,459, Ihnat, Jr., U.S. Patent No. 3,588,914, and McGarrity, U.S. Patent No. 6,438,761 as applied to Claims 18, 19, 22-28, 30, 34, and 35 above, and further in view of any of Alivizatos, U.S. Patent No. 4,607,403, Painter, U.S. Patent No. 5,528,784, Ross, U.S. Patent No. 6,354,665, and Brady, et al., U.S. Patent No. 6,754,924. Claim 31 has been cancelled, thereby rendering the rejection of this claim moot. Claim 32 is believed to be allowable as it depends from independent amended Claim 30 which, as noted above, is believed allowable.

On page 5 of the Office Action, Claims 18, 22, 23, 26, 28, and 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over El Hassen, U.S. Patent No. 4,646,367, in view of Clavelle, U.S. Patent No. 5,675,840. Claim 22 has been cancelled, thereby rendering the rejection of this claim moot. Claim 18, as amended, states "at least one second support pad having an opening therethrough...positionable about the back of the head of the infant to locate

the opening about a flattened area on the head.” Claim 30 similarly states, “at least one second support pad having an opening therethrough...positionable between the back of the head of the infant and a surface.”

Primarily, there is no motivation to combine Hassen ‘367 with Clavelle ‘840. Hassen ‘367 discloses a tumbling cap “designed to protect small children’s heads against knocks on their forehead, sides and back of the head,” (Column 1, Lines 9-11). Clavelle ‘840 discloses a skin heat shield system “that shields the forehead, neck, and ears of a person receiving hair care treatments,” (Column 1, Lines 25-27). Clavelle ‘840 fails to teach or suggest protecting “small children’s heads against knocks,” and Hassen ‘367 makes no mention of shielding skin from heat during “hair care treatments.” The proposed uses of the inapposite devices of Clavelle ‘840 and Hassen ‘367 clearly demonstrate their non-analogous nature, and further evince the improper combination of the references.

Moreover, even if Hassen ‘367 was properly combined with Clavelle ‘840, Hassen ‘367, either alone or in combination with Clavelle ‘840, fails to teach or suggest what is required by Applicant’s Claims 18 and 30. Neither Hassen ‘367 nor Clavelle ‘840 makes any mention of a “second support pad having an opening therethrough,” for treatment of deformational plagiocephaly, and therefore cannot render obvious Applicant’s Claims 18 and 30. As such, the rejection under 35 U.S.C. §103(a) is believed to have been overcome, thus placing Claims 18 and 30 in condition for allowance. Furthermore, Claims 23, 26, and 28 are believed to be allowable as they depend from independent amended Claim 18, which, as discussed above, is believed to be allowable.

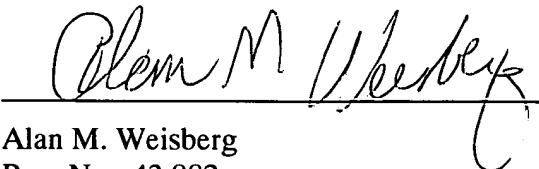
On page 6 of the Office Action, Claims 31 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over El Hassen, U.S. Patent No. 4,646,367, in view of Clavelle, U.S. Patent No. 5,675,840, as applied to claims 18, 22, 23, 26, 28, and 30 above, and further in view of any of Alivizatos, U.S. Patent No. 4,607,403, Painter, U.S. Patent No. 5,528,784, Ross, U.S. Patent No. 6,354,665, and Brady, et al., U.S. Patent No. 6,754,924. Claim 31 has been cancelled, thereby rendering the rejection of this Claim moot. Claim 32 is believed to be allowable as it depends from independent amended Claim 30 which, as noted above, is believed to be allowable.

For all of the above reasons, the claim objections are believed to have been overcome placing Claims 9, 18, 23, 26-28, 30, 32 and 34 in condition for allowance, and reconsideration and allowance thereof is respectfully requested.

The Examiner is encouraged to telephone the undersigned to discuss any matter that would expedite allowance of the present application.

Respectfully submitted,

Date: April 21, 2005


Alan M. Weisberg
Reg. No.: 43,982
Attorney for Applicant(s)
Christopher & Weisberg, P.A.
200 East Las Olas Boulevard, Suite 2040
Fort Lauderdale, Florida 33301
Customer No. 31292
Tel: (954) 828-1488
Fax: (954) 828-9122